

United Parcel Service, Inc. and Rod Howard. Case 10–CA–23981

August 27, 1991

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
CRACRAFT AND RAUDABAUGH

On April 25, 1991, Administrative Law Judge Lawrence W. Cullen issued the attached decision. The Charging Party filed exceptions and a supporting brief and the Respondent filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,¹ and conclusions and to adopt the recommended Order, as modified.²

On June 3, 1991, the Respondent filed a motion to impose sanctions against Paul Alan Levy, the Charging Party's attorney, and Levy's employer, Public Citizen Litigation Group (PCLG), seeking their disbarment from Board proceedings for a suitable period of time, or in the alternative, the imposition of appropriate sanctions on them, including disbarment from Board proceedings in which the Respondent is a party, for a suitable period of time. The Respondent alleges that they violated a protective order issued by the judge with respect to Levy's use, after the judge's decision issued, of at least one of two specific documents originally obtained through discovery in this proceeding. Levy and PCLG filed a memorandum in opposition. The Respondent filed a reply memorandum and Levy and PCLG, in turn, filed a reply memorandum.

We shall deny the motion to impose sanctions. In order to explain the basis for this ruling, however, it is first necessary to set out the facts in some detail.

At the outset of the March 28, 1990 hearing, the Respondent made available to the General Counsel certain documents pursuant to subpoena. With respect to two of them,³ the Respondent asserted a claim of

privilege. The judge agreed to review those documents in camera and rule on the claim.

On April 13, 1990, the judge issued a protective order in which he first "determined that the documents are neither privileged information nor clearly irrelevant to the issues in this case." He then ordered the Respondent to "disclose them pursuant to the General Counsel's subpoena duces tecum but that their use shall be limited to this hearing and shall neither be disclosed nor disseminated to other than counsel of record at this hearing."

On May 11, 1990, the General Counsel filed a motion with the judge to admit certain exhibits into evidence. The motion covered, inter alia, the two documents subject to the protective order, now marked as General Counsel's Exhibits 16 and 20.

On July 13, 1990, Levy wrote the judge requesting a modification in the protective order to permit the use of the two documents in "Board litigation other than this case."

As indicated above, on April 25, 1991, the judge issued his decision. Therein, in footnote 1, he (1) granted in its entirety the General Counsel's posthearing motion to admit exhibits, and stated that the exhibits "are received into evidence and made a part of the record"; and (2) denied the Charging Party's request for a modification of the protective order.

On April 25, 1991, pursuant to an order of the Board's Executive Secretary, this proceeding was transferred to the Board and the entire record was sent to the Case Records Unit in the Board's Washington offices. At that point it became immediately available to the public for inspection and copying. On or about May 1, 1991, a colleague of Levy visited the Board's public reading room and obtained copies of various documents from the record in this proceeding including the two documents covered by the judge's protective order, General Counsel's Exhibits 16 and 20. She promptly furnished Levy with these two documents. Levy then possessed copies of them obtained at two different times and from two different sources—first, from the General Counsel during the posthearing phase of the litigation and, later, from the then-public record.

In early May 1991, Levy informed the Respondent's counsel that since he had obtained copies of the documents in issue independent of the litigation, the protective order no longer constrained him from using them in other proceedings. Following a response from the Respondent's counsel, Levy again asserted to him a right to use a public document that had not been sealed pursuant to the Federal Rules of Civil Procedure. Contemporaneously with this correspondence, Levy filed a brief in a proceeding before the Office of the Election Monitor for the International Brotherhood of Teamsters to which was appended a copy of General Counsel's Exhibit 16. Upon learning of this action by Levy, the

¹ We find no merit in the Charging Party's exceptions, which relate to the judge's limiting the geographical scope of his remedy to the Respondent's East Tennessee District facility located in Knoxville, Tennessee.

The Respondent included within its answering brief a motion to strike a portion of the Charging Party's brief in support of exceptions. Therein the Charging Party asserts that he is filing a new unfair labor practice charge "addressed to the national campaign." The Charging Party acknowledges a possible 10(b) problem but suggests that if the Board now reopens the "national remedy question in this case" he would not pursue the new charge. We grant the motion.

² Although no exceptions were filed to the judge's finding that the Respondent violated Sec. 8(a)(1) of the Act, we shall conform the "in any like or related manner" provisions in his recommended Order to correspond with his notice.

³ They are entitled "Part-Time Labor Relations Workshop" and "Labor Relations Workshop."

Respondent promptly filed this motion to impose sanctions for violation of the judge's protective order.

We find that Levy's May 1991 use of a copy of General Counsel's Exhibit 16 in an unrelated proceeding does not, in the circumstances of this case, constitute a violation of the judge's April 1990 protective order. Levy, as revealed in his correspondence with the judge and with the Respondent's counsel, was at all times aware of and attentive to his obligations under the protective order. He did not even arguably "disseminate or disclose" the document entitled "Part-Time Labor Relations Workshop" until *after* it had become available to the public upon the issuance of the judge's decision in late April 1991.

While Levy's use of the disputed document in May 1991 was not within the spirit of the protective order as issued, the record shows that he took advantage of a later lack of diligence by both the judge and the Respondent's counsel. The judge did not seal the two documents when he admitted them into the record as General Counsel's Exhibits 16 and 20. Further, the Respondent's counsel did not request a seal either at the time of the General Counsel's motion to admit or immediately upon issuance of the judge's decision in which he ruled on both the motion and the request to modify the protective order.⁴

Since, therefore, the judge failed, on and after April 25, 1991, to continue adequately the protection afforded by his extant order,⁵ Levy's use of the document in question did not constitute "misconduct of an aggravated character" necessary to trigger suspension or disbarment under the Board's Rules and Regulations.⁶ Accordingly, under the circumstances of this case, we deny the motion for sanctions.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, United Parcel Service, Inc., Knoxville, Tennessee, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 1(b).

"(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed them in Section 7 of the Act."

⁴ We note that Levy informed the Respondent's counsel in May 1991 that he intended to use, in another proceeding, copies of the documents obtained from the Board's Washington office after the record had been transferred to the Board.

⁵ See Fed.R.Civ.P. 26(c).

⁶ Sec. 102.44(b).

Ellen K. Hampton, Esq., for the General Counsel.
Lewis R. Hagood, Esq. (Arnett, Draper & Hagood), for the Respondent.

Paul Alan Levy, Esq., Public Citizen Litigation Group, for the Charging Party.

DECISION

STATEMENT OF THE CASE

LAWRENCE W. CULLEN, Administrative Law Judge. This case was heard before me on March 28, 1990, in Knoxville, Tennessee pursuant to a complaint filed by the Regional Director of Region 10 of the National Labor Relations Board (the Board) on December 11, 1989. The complaint alleges a violation of Section 8(a)(1) of the National Labor Relations Act (the Act) was committed by United Parcel Service, Inc. (the Respondent or UPS) by its denial of access to a general purpose employee bulletin board and is based on a charge filed by Rod Howard, an Individual, on February 24, 1989. The complaint is joined by Respondent's answer thereto filed on January 8, 1990, which denies the commission of any violations of the Act by Respondent.

On the entire record in this proceeding, including my observation of the demeanor of the witnesses who testified herein, and after due consideration of the motions and responses thereto and positions asserted at the hearing and the briefs filed by the General Counsel, Counsel for Charging Party, and Counsel for the Respondent, I make the following

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

The complaint alleges, the Respondent admits, and I find that Respondent is and has been at all times material, an Ohio corporation with an office and place of business located in Knoxville, Tennessee, where it is engaged in the transportation and delivery of goods by truck and that during the past calendar year, a representative period of all times material, it performed services valued in excess of \$50,000 directly for customers located outside the State of Tennessee and has been at all times material an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICE¹

Respondent had for many years permitted a general purpose bulletin board which was kept in the feeder drivers (tractor-20 trailer) locker room at its East Tennessee District facility in Knoxville, Tennessee. In addition to the general purpose bulletin board Respondent maintained a company bulletin board where the Respondent posted its notices to its employees and in accordance with the terms of the labor agreement between the Respondent and Teamsters Local No. 515 affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO (the Union), the Union was permitted to maintain its own bulletin board on the Respondent's premises for official union business only. Both the Respondent's and the Union's bulletin boards were glass enclosed and locked to ensure

¹ 1. The General Counsel's posthearing motion for admission of G.C. Exhs. 9-20, 21(a)-21(l), and 22, is granted and those exhibits are received in evidence and made a part of the record; 2. Charging Party's posthearing motion To admit C.P. Exh. 1 is granted and the exhibit is received in evidence and made a part of the record; 3. Charging Party's posthearing motion to compel further responses to subpoena is denied; 4. Charging Party's request for a modification of a protective order issued at the hearing is denied.

their use would be limited to the Respondent and the Union respectively and were placed in the Respondent's business area. The general purpose bulletin board which was in the feeder drivers locker room was not so restricted and any of the employees were permitted to place notices on the bulletin board such as items for sale, notices of illness, collections taken up for employees and others in time of need, and an informal employees welfare fund known as the "Sick and Accident Fund." (S&A Fund). In addition Charging Party Rod Howard testified he placed literature disseminated by Teamsters for a Democratic Union (TDU) on this bulletin board. Howard is a member of Teamsters Local 515 which represents the drivers at the facility. He is also the local representative of TDU at the East Tennessee facility. TDU is a national dissident organization made up of some members of the Teamsters Union which often opposes national and local official Teamsters positions on bargaining and contracts and representation and which also sponsors rival candidates for election to Teamsters offices. The bulletin board was used as a vital source of information by the Sickness and Accident Fund (S&A Fund) as the facilities are manned on a 24-hour basis with drivers coming and going at various times. Howard testified that although he was permitted to distribute TDU literature during his nonworking time in nonwork areas, the bulletin board use enabled him to make the TDU literature available by posting it on the general purpose bulletin board in the feeder driver's locker room. Howard testified that as contract negotiations draw near and leading up to ratification votes TDU activities and distribution of literature increases. In 1987 TDU campaigned to obtain a more favorable contract with Respondent than the International Teamsters Union had negotiated and opposed its ratification and a majority of the employees voted against ratification. However the Teamsters imposed a rule requiring a two third majority to reject the agreement.

Howard testified that in 1987, a contract negotiation year, he posted TDU literature on the general purpose bulletin board and repeatedly found it missing when he next observed the bulletin board on his return to the facility. Feeder driver Henry Pickett testified that in mid-July 1987, he observed then District Manager Ron Hodgnett remove TDU literature from the bulletin board. When Hodgnett observed Pickett, he told Pickett that "we can't have that stuff on the wall [board]," and "We're not going to allow it." Hodgnett also stated that the TDU literature was "nothing but a bunch of filth and garbage." Pickett told Howard about the incident. Howard testified he then went to Hodgnett who told him if he put the TDU literature on the general purpose bulletin board again, he would tear it down and that he had been told to do so by management. Howard testified he continued to post the TDU literature on the general purpose bulletin board up to the time of the contract ratification and it was gone when he returned on several occasions during this period until October 1987, when the contract was ratified. Hodgnett told him again that if he put TDU literature on the bulletin board it would be removed. Only TDU literature was removed. Howard filed a charge with the Board in 1987 concerning the removal of the TDU literature which charge was ultimately settled. I credit the un rebutted testimony of Pickett and Howard as set out above.

In 1988 and 1989, Respondent issued a number of corporate guidelines, audits, and training memoranda (G.C.

Exhs. 10-20), to its managers around the country. These documents discuss TDU as a dissident organization and note that some dissident organizations give out "disinformation" which is deliberately misleading. These documents also directed managers to permit only official company and union bulletin boards and to prohibit anything "detrimental or demeaning to the Union or the Company." The guidelines (G.C. Exh. 11) also called for managers to devise and implement a plan for correcting or eliminating "General Bulletin Boards" as opposed to union or company bulletin boards. The guidelines also spoke of "troublesome locations" with respect to the General bulletin boards and suggested "Following a gradual rather than an abrupt timetable so as to prevent this implementation of the Policy from being perceived as a sudden change in our approach to communications. (The District Manager will have to determine the timetable based on an assessment of each situation.)" (G.C. Exh. 11).

In July 1988, Charles Heusser became district manager of the East Tennessee District in Knoxville. Heusser testified he did a complete walk-around of the then existing facility (located on Middlebrook Pike) from which Respondent was to move to a new facility (located on Callahan Road) in the Knoxville area in October 1988. Heusser testified he noted a number of items which were not up to UPS standards at the old facility and noted the general purpose bulletin board in the feeder drivers locker room. He testified it was in total disarray and was a "mess." He made the decision not to put up the general purpose bulletin board in the new facility when a scheduled move in October 1988 of the District to new facilities in Knoxville was made. It was his decision for two reasons: The bulletin board did not meet UPS standards. By this he means neatness and cleanliness. Secondly he had never seen a general purpose bulletin board in any of the many facilities he has worked in during his career at UPS. The decision was his alone although he discussed it with supervisors. There is a company and union bulletin board at the new facility. Both are glass enclosed and key locked. Both the Company and the Union have keys to the union bulletin board. He had numerous complaints after he did not allow a general purpose bulletin board to be put up at the new facility, principally from employees about a place to post the S&A Fund information. Subsequently at an annual "Lets Talk with Chuck [Heusser]" meeting attended by the drivers, he proposed (after discussing with legal counsel) that the S&A Fund information could be put on either union or company letterheads and initialed by either a union or company representative and put on either the union or the company bulletin board and special collections taken up for individuals in need could be put on either bulletin board with directions to contact a union steward. Heusser testified he was not aware of any problem with TDU postings and he, himself had not observed TDU postings on the old general purpose bulletin board and TDU had nothing to do with his decision not to put up a general purpose bulletin board in the new facility. Prior to the filing of the charge in this case no employee ever came to him and requested permission to put up TDU literature. TDU literature is regularly distributed on UPS premises and parking lots on nonwork time in nonwork areas. He does not allow it to be placed on bulletin boards at UPS. He was not aware of prior TDU problems at the East Tennessee District prior to his decision not to put up a general purpose bulletin board at the new facility. The

company position statement given to the Board in answer to the underlying charge in this case states "There was no unofficial Board erected at the new facility since the facility was not so configured or designed." However, his reasons for not putting up the bulletin board had nothing to do with the configuration or design of the building.

Henry Pickett testified that around November 1, 1988, shortly after Respondent moved to its new facility in Knoxville, he and employee Jim Crawford talked to Feeder Manager Randy Cunningham and Crawford asked Cunningham about a bulletin board to put up information for the S&A Fund and about that time Rod Howard walked up and Cunningham said, "We are not going to have no Union bulletin board." "He'd [Howard] just put TDU stuff on it." It should be noted that this conversation was in reference to the general purpose bulletin board. Pickett also testified that he had asked Division Manager Lewis Byrd two or three times to put up a general purpose bulletin board at the new facility since the move was made and Byrd told him it is just company policy not to put it up and he could not do anything about it. Byrd did not explain why it was company policy not to put up the bulletin board. Pickett's account of the meeting with Cunningham was corroborated by employee James D. Crawford, Jr. who is the treasurer of the S&A Fund. Crawford testified Cunningham said there would not be a bulletin board because it would be full of TDU literature. Crawford testified he has never been given any other reason for Respondent's refusal to put up a new bulletin board in the feeder drivers locker room at the new facility.

Rod Howard testified there is a locker room for feeder drivers in the new facility and space available for a bulletin board but none has been posted. Howard testified that in November 1988, Randall Cunningham was talking to employees Henry Pickett and Jim Crawford and he walked by them and heard Crawford ask Cunningham about putting a bulletin board up and Cunningham said "the Company couldn't do that because all that would be on there would be old TDU literature." Howard testified further he has talked to Division Manager Byrd four or five times about putting up a bulletin board in the new facility and Byrd has never given him any explanation for not putting it up other than it is company policy not to put it up. Howard also testified he talked to Personnel Manager Donna Tidwell in December 1988 about putting a bulletin board up and she said it was company policy not to have one.

In October 1989, Heusser held two, "Let's talk with Chuck [Heusser]" meetings with the drivers which were split into two groups with each driver attending one of the meetings. At this time he announced his intention to permit the posting of S&A Fund and certain other notices. Pickett, Crawford, and Howard each attended one of these meetings. Pickett testified that at the new facility he has observed company sponsored ball games and golf tournaments posted on walls or the mirror in the locker rooms. On one occasion in the latter part of 1989 there was a note on the side of the wall about taking up a collection for employee Steve Cox who was ill and the note was taken down by a supervisor. Pickett went to Manager Byrd about it and Byrd said the note should not have been on the wall and if Pickett would write it out and have it initialed by a union steward it could be placed on the company bulletin board. Pickett did so and had it initialed by a union steward and it was placed on the

company bulletin board. Crawford testified he has never put S&A Fund notices on either the Company or union bulletin boards.

Division Manager Lewis Byrd testified he did not have any discussions with Howard in 1987, as he was at the Morristown Center and was not at the Knoxville facility during that time. Byrd came to the Knoxville facility in March 1988 and testified he observed derogatory remarks and cartoons on the general purpose bulletin board in the feeder locker room which he removed and a reference to a black supervisor as "Boogaloo" which he regarded as a derogatory racial remark. He discussed with District Manager Heusser the subject of not putting up a bulletin board in the new facility but Heusser made the decision. He was subsequently approached by union stewards and Rod Howard as to why there could not be a general purpose bulletin board in the new facility and told them it was company policy and it was hard to monitor derogatory remarks. He testified the subject of TDU literature did not come up and had nothing to do with the decision. He testified that the day before the hearing was the first time Howard brought up the subject of TDU as the reason for not putting a bulletin board in the feeder locker room at the new facility and that he told Howard the bulletin board was not put up because of racial slurs and derogatory remarks. Pickett, Crawford, Howard, and feeder driver Steve Cox all testified they had not observed derogatory remarks on the old general purpose bulletin board. Crawford testified that he is black and has used the term "Boogaloo" in reference to black supervisor Gary in front of supervisors by other drivers and that he [Crawford] does not regard the term as a racial slur.

Knoxville Night Sort Manager Randall Cunningham testified he had observed cartoons of former District Manager Rod Hodgnett, and vulgar remarks and the term "Boogaloo" all of which he removed during the period from 1987-1988 when he was a supervisor in the feeder department. He acknowledged the conversation in October or November 1988 with Crawford and Pickett when Howard walked in but denied he made any mention of TDU or that TDU was the reason a bulletin board was not put up in the feeder locker room at the new facility. He told Crawford there was nothing he could do about S&A Fund postings and to talk to Byrd. He testified that neither Heusser or Byrd told him why the bulletin board was not put up in the new facility.

III. ANALYSIS

I find that the General Counsel has established a prima facie case of a violation of Section 8(a)(1) of the Act. Initially I find the evidence has shown that the Respondent had knowledge of the use of the general purpose bulletin board by TDU. The existence of a prior dispute regarding the use of the general purpose bulletin board which resulted in a filing of an unfair labor practice by TDU representative Rod Howard clearly established that the Respondent had knowledge of the use of the Board by TDU. With respect to the admissibility of this evidence I find that although the merits or lack thereof of the earlier charge which was settled clearly have no relevance to this case, and cannot bear on the merits of this case, the fact that there was a dispute over the use of this bulletin board by TDU clearly establishes that Respondent had knowledge of the use of this bulletin board by TDU. Under these circumstances I do not credit Heusser's

assertions in his testimony that he was unaware of the use of the bulletin board by TDU. Moreover I find merit to the contentions of the General Counsel and the Charging Party that the various guidelines and other company documents relating to the elimination of general purpose bulletin boards constitute evidence of an overall purpose of eliminating general purpose bulletin boards. However, I do not find that the decision and remedy in this case should be expanded to include all UPS facilities in the country as contended by the Charging Party's representative in his brief. I find rather that the decision and remedy in this case should be limited to the Knoxville facility where the charge was filed and the case was processed and heard. With respect to the merits of this case I find the General Counsel has made a prima facie case showing that the denial of access to a general purpose bulletin board at Respondent's new facility was motivated at least in part because of its demonstrated animus to TDU. I credit the un rebutted testimony of Pickett and Howard concerning the removal of TDU literature by then District Manager Ron Hodgnett and his adverse comments regarding it and his threats to remove it again if it were reposted by Howard. I also credit the testimony of Howard, Pickett, and Crawford over the denial of Cunningham and find that in November 1988, after the Respondent moved in to its new facility and refused to post a bulletin board in the feeder locker room, that Cunningham stated it would just have TDU material over it. I also find noteworthy Byrd's admission that Howard had asked him for a new bulletin board at the facility as it was well known that Howard was the TDU representative at the facility. I find the case of *Roadway Express*, 279 NLRB 302 (1986), to be controlling in this case. In that case the Board relied on *Wright Line*, 251 NLRB 1083 (1980), enfd. as modified 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), and applied the framework for analysis set out in *Wright Line* to an alleged violation of Section 8(a)(1) of the Act that turned on the employer's motivation in considering the legality of the removal of break room bulletin boards. In *Roadway Express*, supra at 303, the Board stated:

In *Wright Line*, supra, the Board adopted a test for evaluating cases alleging violations of Section 8(a)(3) of the Act or, as in the instant case, a violation of Section 8(a)(1) turning on the motive of the employer. Pursuant to the *Wright Line* test, the General Counsel must make a prima facie showing sufficient to support the inference that protected conduct was a motivating factor in the employer's decision to take the allegedly unlawful action. If the General Counsel makes such a prima facie showing, the burden of going forward with the evidence shifts to the employer to show that it would have taken the same action even in the absence of the protected conduct.

In *Roadway*, the Board then found that the General Counsel had made a prima facie case that the employer removed the break room bulletin boards because it wanted to prohibit the posting of union and TDU material. The Board then found that the employer had failed to establish that it would have removed the bulletin boards even in the absence of the posting of union and TDU material on them and rejected the employer's defenses that it had removed the bulletin boards

because of the posting of disparaging and threatening remarks aimed at the terminal manager.

In the instant case I find that the Respondent has failed to rebut the prima facie case of a violation of Section 8(a)(1) by the refusal to put up a general purpose bulletin board at the Respondent's new facilities. Initially, I find as contended by General Counsel that the Respondent relied on shifting defenses in this case. Thus in its position statement given to the Region investigating the charges, Respondent contended the bulletin board had not been put in the new facility because of the configuration and design of the new facility. This was rebutted by the testimony of Pickett and Howard who testified there was ample room on the wall in the new feeder locker room for a bulletin board. Next the Respondent's district manager who asserted he made the decision stated he did so because the old bulletin board had not met UPS standards and because he had not never seen such a bulletin board in any facility he had previously worked in. He also admitted he did not permit the posting of TDU literature. Then the Respondent's manager Byrd contended no bulletin board was put up at the new facility because of derogatory remarks and cartoons and a racial slur, which alleged racial slur I find to be pretextual on the basis of the testimony of employee Crawford who is black and testified this was a nickname commonly attributed to the particular black supervisor which had been used openly by employees in the presence of supervisors in the past.

CONCLUSIONS OF LAW

1. The Respondent, United Parcel Service, Inc. is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Teamsters for a Democratic Union (TDU) is an organization made up of employees who are members of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO.

3. By denying its employees access to a general purpose bulletin board in order to prohibit or prevent the posting of TDU material in the feeder drivers locker room, the Respondent interfered with the protected activities of its employees in violation of Section 8(a)(1) of the Act.

REMEDY

Having found that the Respondent has engaged in unfair labor practices, it shall be ordered to cease and desist therefrom and to take certain affirmative actions designed to effectuate the policies of the Act including the installation of a bulletin board for general purposes in the feeder drivers locker room to replace the original board in its old facility, and to post a notice in its general business areas where notices to employees are usually posted, including the Company designated bulletin board and the bulletin board to be installed in the feeder drivers locker room of its new facility in Knoxville, Tennessee.

On these findings of fact and conclusions of law, and on the entire record, I issue the following recommended²

²If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

ORDER

The Respondent, United Parcel Service, Inc., Knoxville, Tennessee, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Denying its employees access to a general purpose bulletin board in order to prohibit or prevent the posting of Teamsters for a Democratic Union (TDU) material in the feeder driver locker room at its East Tennessee District facilities in Knoxville, Tennessee.

(b) In any like or related manner interfering with or coercing employees in the exercise of the rights guaranteed them under Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Install a bulletin board for general purposes in the feeder drivers locker room in its new facility in Knoxville, Tennessee, expressly permitting the posting of TDU material to replace the original board in its old facility.

(b) Post at its East Tennessee District facility in Knoxville, Tennessee copies of the attached notice marked "Appendix."³ Copies of the notice on forms provided by the Regional Director for Region 10, after being duly signed by the Respondent's authorized representatives shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted including the Company designated bulletin board and the bulletin board to be installed in the feeder drivers locker room. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT deny our employees access to a general purpose bulletin board in order to prohibit or prevent the posting of Teamsters for a Democratic Union (TDU) material in the feeder drivers locker room.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of their rights guaranteed by Section 7 of the Act.

WE WILL install a new bulletin board for general purposes in the feeder drivers locker room at our East Tennessee District facilities in Knoxville, Tennessee, and will permit the posting of TDU material thereon.

UNITED PARCEL SERVICE, INC.